

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

0315-000487/DVA

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Application Number

09/977,552

Filed

October 15, 2001

First Named Inventor

Hank Millet et al.

Art Unit

3746

Examiner

Charles G. Freay

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Michael Malinzak/

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Signature

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Registration number if acting under 37 CFR 1.34 _____

January 22, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.

☒ *Total of 2 forms are submitted.

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9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

PRE-APPEAL BRIEF REQUEST FOR REVIEW
SUPPLEMENTAL PAGES

The pending claims currently stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Centers et al., U.S. 6,471,486, in view of Culp III, et al., U.S. 5,975,854¹. As agreed by the Examiner, the prior art fails to show a system master that sends a configuration data request to a control block associated with a compressor, that receives a copy of an image of configuration data from the control block in response to the request, that constructs a new image of configuration data for the compressor, and that sends the new image to the control block for storage in the memory, as recited by independent claim 69. See Office Action, 10/22/2008, p. 4.

Although not shown by the prior art, the Examiner argues that at the time of the invention it would have been obvious to modify Centers et al. to include these features and arrive at the apparatus recited by claim 69. See Office Action, 10/22/2008, pp. 4-5. Applicants maintain that the Examiner's argument amounts to "impermissible hindsight," improperly based on Applicants' disclosure, and not on "facts gleaned from the prior art." See M.P.E.P. § 2142 ("[I]mpermissible hindsight must be avoided and the legal conclusion [of obviousness] must be reached on the basis of the facts gleaned from the prior art.")

Further, the Examiner's proposed modification would render the Centers et al. system unsatisfactory for its intended purpose and would change the Centers et al. principle of operation. See M.P.E.P. § 2143.01. As such, the Examiner has failed to establish a *prima facie* case of obviousness, as a proper motivation for making the Examiner's proposed modification has not been shown. See M.P.E.P. § 2143.01. See

¹ Although cited, Culp III et al. is not relied upon for any of the limitations of independent claim 69.

A/so, O.G. Notice July 12, 2005, providing that pre-appeal request subject matter includes: “that a limitation is not met by a reference or the examiner failed to show proper motivation for making a modification in an obviousness rejection.”

I. LIMITATIONS NOT SHOWN BY THE PRIOR ART

Claim 69 recites an apparatus comprising a compressor, a control block associated with the compressor, a memory accessible to the control block and associated with the compressor, and a system master in communication with the control block. The memory stores a first image of configuration data for the compressor. The configuration data includes compressor identification data, compressor application data, compressor event history data, and compressor control data including at least one compressor set point and at least one compressor pressure limit. The system master sends a configuration data request to the control block and receives a copy of the first image of the configuration data from the control block in response to the request. The system master constructs a new image of configuration data for the compressor. The new image, like the first image, includes compressor identification data, compressor application data, compressor event history data, and compressor control data including at least one compressor set point and at least one compressor pressure limit. The system master sends the new image back to the control block. The control block receives the new image from the system master and stores the new image in the memory in place of the first image.

The Examiner agrees that the prior art fails to teach or suggest a system master that sends a request to a control block for an image, that constructs a new image, or

that sends a new image back to the control block. *See* Office Action, 10/22/2008, p. 4.

As stated by the Examiner:

Centers '486 does not specifically state that the system master makes request to the control block for an image containing the noted information or set forth that the modified or new image is sent back to the control block and stored in the original location within the memory.

See Office Action, 10/22/2008, p. 4.

Rather, the Examiner argues that the recited limitations would be an obvious modification of Centers et al. *See* Office Action, 10/22/2008, pp. 4-5.

II. THE EXAMINER HAS FAILED TO SHOW PROPER MOTIVATION FOR MODIFYING THE CENTERS ET AL. REFERENCE

Centers et al. is directed to a communication system that permits remote access of compressor operating parameters for purposes of "real time operations monitoring," "maintenance and service diagnosis," "fine tuning," "optimization," and "evaluation." Centers et al., Col. 14, line 64-Col. 15, line 2. In Centers et al., once a connection is made, a remote PC can access the information of the electronic control system, including operating parameters, service information, and shut down records so that service problems can be diagnosed and "fine tuning" adjustments can be made. Centers et al., Col. 15, lines 5-7 and Col. 25, Line 58 - Col. 26, Line 4.

Although not described, the Examiner argues that "[t]he transmission of a single image containing the data would minimize the number of operations and ensure that the data represents the conditions at a single point in time." *See* Office Action, 10/22/2008, p. 5. Further, the Examiner argues that "[t]his placement of the new image in the location of the old would allow the system to continue to operate without requiring the

control block to reassign new memory addressed through the controller software for the location of each piece of data within the memory. *See* Office Action, 10/22/2008, p. 5.

Applicants respectfully submit that the Examiner's proposed modification would render Centers et al. "unsatisfactory for its intended purpose" and would "change the principle of operation of the reference." *See* M.P.E.P. § 2143.01 (stating: "THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE" and "THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF OPERATION OF A REFERENCE").

As explicitly stated in the reference, the Centers et al. system is designed to allow communication of operating parameters "for purposes of" real time monitoring, maintenance and service diagnosis, and fine tuning adjustment and optimization. *See* Centers et al., Col. 14, line 64-Col. 15, line 2 and Col. 25, Line 58-Col. 26, Line 4. In other words, the Centers et al. reference is directed to a system for allowing a serviceperson to remotely access operating parameters and fine tune, evaluate, and adjust the operating parameters. *See* Centers et al., Col. 25, line 58-Col. 26, line 12.

Contrary to the explicit purpose of the reference, the Examiner proposes a modification to additionally include copying of a "full image" of the data for receipt at the system master. *See* Office Action, 10/22/2008, p. 5. This modification, however, would render the Centers et al. system unsatisfactory for its intended purpose. The Centers et al. described serviceperson performing real time monitoring, diagnosis, fine tuning, and adjustment of a compressor system would only be concerned with the specific parameters under evaluation and would not want to sacrifice the time or undergo the

extra steps needed to unnecessarily copy a full image of all configuration data to a system master, construct a new image of configuration data, and then send the new image back to the compressor. Indeed, the additional time and steps required to communicate and transfer all of the data from the compressor to the system master would add unneeded complexity to the task and defeat the “real time” nature of the monitoring, fine tuning, and adjusting that is the focus of the Centers et al. reference.

The apparatus recited by claim 69, on the other hand, recites a system master that receives a copy of an image of configuration data, constructs a new image, and sends the new image to the control block. By way of further example, the apparatus allows a compressor to be initially configured by the system master when the control block receives the new image of compressor data from the system master. *See e.g.*, dependent claim 32.

Because the Examiner has failed to establish a *prima facie* case of obviousness, Applicants respectfully request that the Pre-Appeal Brief Conference Panel withdraw the rejections of independent claim 69, as well as dependent claims 19-21, 26-28, 30, 32-34, 48, 50, 53-54, 56, 58-64 and 66, which are believed to be in condition for allowance.

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